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MORTGAGE TAXATION

ROBERT ARGYLL CAMPBELL

MADISON WISCONSIN
DECEMBER 1908

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ROBERT ARGYLL CAMPBELL

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CONTENTS

	Page
REFERENCES	3
INTRODUCTION	5
LAWS AND JUDICIAL DECISIONS	9
History and present law	9

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REFERENCES

Adams, Thomas S. Mortgage statistics and taxation in Wisconsin and neighboring states. Report of the Wisconsin Tax Commission, 1907.

A scientific, statistical investigation of the effect of the mortgage tax law of Wisconsin, 1903, together with many other facts of special interest to the economist and tax expert.

——, Mortgage Taxation in Wisconsin. Quarterly Journal of Economics, Nov. 1907.

Based on the preceding, more detailed discussion by the same author.

Fetter, Frank A. Change in mortgage taxation in New York, 1906. Quarterly Journal of Economics, Aug. 1906.

A brief, concise statement of the introduction of the recording tax on mortgages in New York.

Haugen, Nils P. The exemption of credits, 1903.

A general discussion of the question of exempting credits.

Plehn, Carl C. Taxation of mortgages in California. Yale Review, May, 1899.

A discussion of the California law and the effect of its administration.

Seligman, Edwin R. A. The new mortgage tax in New York. Review of Reviews, July, 1905.

A brief discussion of the law imposing an annual tax on mortgages, 1905.

Report of Washington State Board of Tax Commissioners, 1906.

Contains a brief discussion by each of the commissioners on the subject of taxing moneys and credits.

State and Local Taxation. First National Conference, 1907. Published by The Macmillan Company.

An up to date treatment of many of the leading questions of taxation.

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INTRODUCTION

The proper method of taxing mortgages is still an unsettled problem. In a great majority of states mortgages are taxable as personal property to the holder at his place of residence and the real estate given as security is taxable to the owner at the situs of the property. It is the system usually known as double taxation of the mortgage debt and the mortgaged property. The mortgagor almost without exception pays taxes on the property without deduction and oftentimes agrees to pay taxes on the mortgage in the hands of the owner, should it be taxed.

These laws providing that mortgages are taxable as personal property are never fully enforced and it is only in rare instances and for short periods that any considerable percentage of the mortgages are listed for taxation at their full value.

A percentage of the total number of mortgages is listed, it is true, but that percentage is small and is usually made up of mortgages where both parties to the contract are residents of the same assessment district, mortgages brought to light by the settlement of estates, and mortgages representing but a fractional part of large holdings of similar property which are

given in to allay suspicion and thus aid in concealing the amount actually owned and held.

Only exceptions to the laws taxing mortgages as personal property will be noted here. When objections were raised to the system of double taxation the natural solution of the problem was to tax mortgages as an interest in the real estate. When this is done the vital question is whether or not the parties to the mortgage are permitted to enter into a contract concerning the payment of the taxes. If this privilege is not granted and the law is enforced then each party to the mortgage must pay taxes on his respective interest—the mortgagee on the value of the mortgage at the situs of the property and the mortgagor on the value of the real estate minus the indebtedness. If contracts are permitted then the mortgagor usually agrees to pay all taxes on the encumbered property and the mortgagee is exempt,—the theory being that the mortgagor will get the loan at a reduced rate of interest by agreeing to relieve the mortgagee from all obligations with regard to taxes.

Both systems have been tried. California is the best example of a state where contracts were not permitted. This system prevailed there from the time of the adoption of the second constitution in 1879 until the court held that separate contracts were permissible (120 Cal. 220, 1898). The objectional part of the constitutional provision was repealed in 1906 and a new law passed in 1907 permitting contracts. Missouri had a similar law (1900) but the supreme court

of the state declared it unconstitutional on the ground that since the mortgages of certain corporations were not to be treated as an interest in the real estate, such corporations were thus deprived of the equal protection of the law provided for under the fourteenth amendment.

At the present time mortgages in California, Connecticut, Massachusetts, New Jersey and Wisconsin are taxable as an interest in the real estate and the parties to the mortgage are permitted to enter into a contract concerning the payment of the taxes. Michigan and Oregon had similar laws but they were both silent with regard to contracts. The Michigan court in Latham v. Board of Assessors (91 Mich. 509, 1892) held that such agreements were permissible. In both states the laws have since been repealed (1893).

If the actual enforcement and working out of the laws are considered, Colorado belongs in the same class as Massachusetts and Wisconsin. The law provides that the mortgage and the property given as security are to be assessed as a unit and that the mortgages are not to be returned or assessed.

In Indiana a somewhat different system prevails. The mortgagor may have the amount of the mortgage indebtedness not exceeding seven hundred dollars deducted from the assessed value of the mortgaged premises. In no case can this deduction be greater than one half of the assessed value of the real estate. If this deduction is claimed and allowed the mortgage debt or that portion of it which is taxable is assessed

as personal property to the mortgagee at his place of residence.

In Pennsylvania mortgages are uniformly subject to a tax of four mills on the dollar; the proceeds from this source are divided between the state and the counties.

Mortgagees in certain enumerated counties of Maryland are required to pay a tax of eight per cent upon the gross amount of interest covenanted to be paid on mortgages held by them.

Idaho and Washington exempt mortgages from taxation by law.

In Alabama, Minnesota, New York and Virginia mortgages are subject to a recording or privilege tax paid at the time of recording depending on the amount of the tax of the mortgage debt

All other states tax mortgages as personal property.

LAW AND JUDICIAL DECISIONS, UNTED STATES

Alabama

History. In Alabama prior to 1903 mortgages were subject to taxation as personal property (Code, 1896, vol. 1, sec. 3911, sub sec. 7). In 1903 (Acts, 1903, p. 227) a privilege tax of fifteen cents on every one hundred dollars was imposed at the time of recording. The present law was passed in 1907, and is but a slight modification of the law of 1903.

Constitution, 1901, art. 11, sec 1. All taxes levied on property in this state shall be assessed in exact proportion to the value of such property.

Present Law, Acts, 1907, p. 455, sec. 1. No mortgage, deed of trust, contract of conditional sale, or other instrument in the nature of a mortgage executed so as to convey real property or any interest in real or personal property situated within the state is to be received for record unless a privilege tax has been paid. This tax amounts to fifteen cents, if the indebtedness secured is one hundred dollars or less; and an additional fifteen cents is added for every additional one hundred dollars or fraction thereof. The law states definitely that the tax is to be paid by the lender.

When the mortgage is presented to the judge of probate of the county in which any of the property conveyed is situated and the tax is paid, the probate judge makes a certification to that effect on the instrument, and then the mortgage may be recorded in any county where property given as security is situated without any additional tax, except the fee for recording. An extension or renewal contract is subject to the same tax as the original mortgage. If the tax prescribed by this act has been paid, neither the mortgage nor the debt secured is to be subject to an ad valorem tax, either for state, county, or municipal purposes. The probate judge receives 5 per cent of the amount collected by him as compensation for his services. Of the remainder, one-third is paid to the county treasurer of the county in which the taxes are collected, and two-thirds to the state treasurer. If the land which is given to secure the debt is situated in more than one county of the state, then, this one-third is divided among the county treasurers in proportion to the value of the property given as security in each county. In cases where only part of the property is within the state, the proportional part within and without is determined by the state board of compromise, and the taxes paid accordingly.

It is made a misdemeanor, punishable by a fine, for the probate judge to file for record any mortgage upon which the taxes have not been paid.

Arizona

Revised Statutes, 1901. In Arizona (sec. 3847) property under mortgage or lease is listed by and taxed to the mortgagor or lessor, unless it is listed by the mortgagee or lessee. With certain enumerated exceptions (sec. 3834) all property is subject to taxation, but double taxation is not permitted. Liabilities may be deducted from solvent debts (sec. 3835).

Arkansas

Constitution, 1874, art. 16, sec. 5. All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state.

Present Law. Dig. of St., 1904. In Arkansas mortgages are taxed as personal property. The law requires (sec. 6873) that all property, including moneys and credits, shall be taxed, and credits are defined (sec. 6872) as the excess of the sum of all legal claims and demands over and above the sum of legal bona fide debts which the person owes. Every person (sec. 6899) is required to list all moneys loaned by him, but is not required (sec. 6902) to list a greater portion of any credits than he believes can be collected.

Court Decisions. A note given for land, and the land itself, are both subject to taxation; the note as property of the holder, and the land as property of the purchaser. Ouachita County v. Rumph, 43 Ark. 525, 1884.

California

History. The constitution of 1849 (art. 11, sec. 13) stated that taxes shou d be uniform and equal throughout the state and that all property should be taxed in proportion to its value. The statutes enacted about the same time (1849–50, c. 52, sec. 2, 4) provided that mortgages were to be taxed as personal property. In 1851 (c. 6, sec. 21) a special clause was incorporated, and money loaned at interest was made subject to a tax of one dollar for each one hundred dollars of value. This system was used for one year only, when change was made and mortgages were made taxable as an interest in the real estate (St. 1852, c. 3, sec. 13)—the mortgagee to pay taxes on the money secured by the mortgage, and the mortgagor on the value of the property less the value of the mortgage. The next year (1853) the mortgagor was required (c. 167, art. 10, sec. 9) to pay taxes on the value of the property without deduction, and the mortgagee on the amount of money lent (c. 167, art. 1, sec. 1). In addition to this persons engaged in the business of lending money were subject to a license tax of ten cents for every one hundred dollars of business estimated to have been done (c. 167, art. 3, sec. 1).

This system continued until 1870 when an effort was made to re ieve the owners of encumbered real estate from double taxation (St. 1869–70, c. 424, 485). The law read as follows: "No mortgage or lien given and held upon real estate, or the debt thereby secured,

or promissory note secured by mortgage, shal' be assessed upon the books of any assessor, state, county, or otherwise." At first the courts held that mortgages were property, and as such could not be exempt from taxation under the constitution (People v. Eddy, 43 Cal. 331, 1872; Lick v. Austin, 43 Cal. 590, 1872). Later the court practica'ly reversed these decisions and stated that mortgages should not be taxed because such action would violate the constitutional requirement providing that all taxation should be uniform and equal and that property should be taxed in proportion to its value. The court held that a tax on the mortgage and on the property given as security was a case of double taxation, and, as such, forbidden by the constitution. (People v. Hibernia Bank, 51 Cal. 243, 1876). See Savings and Loan Society v. Austin, 46 Cal. 415, 1873).

The present constitution in California was adopted in 1879 and did contain two sections relating to the taxation of mortgages. Under sec. 4, art. 13, mortgages were to be taxed as an interest in the real estate, and each party to the contract was to pay taxes on his respective interest; sec. 5 stated that all contracts by which a debtor was obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust or other lien, were to be null and void. Court decisions practical'y annulled that part of the law forbidding contracts, for in the case of London and San Francisco Bank v. Bandman (120 Cal. 220, 1898) the court held that an allegation and finding

which did not state that the agreement of the mortgagor to pay the taxes was part of the mortgage contract, was not broad enough to establish an agreement violative of the constitution.

Sec. 5 was actually repealed in November, 1906 (See Const. St., 1907) and the question of repealing sec. 4 is to be voted on by the people in November, 1908 (St. 1907, p. 1159).

Constitution, art. 13, sec. 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof; provided, that if any such security or indebtedness shall be paid by any

such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

Present Law. Sec. 4, art. 13, of the constitution still remains in force, but sec. 5 has been repealed.

Statutes, 1907, c. 368, sec. 1. With minor changes in the punctuation and wording, sec. 4 of the constitution is reproduced in the statutes, but that part of the statutes that formerly corresponded to sec. 5 of art. 13 of the constitution has been materially changed since the repeal of that section in 1906. Now the parties to any mortgage are given the right to provide by contract that the debtor shall pay all or any taxes or assessments on the money loaned, or on the mortgage, deed of trust, or other lien, or on the property covered or the obligation secured. Such contracts are to be valid and constitute a waiver by the debtor of all rights to treat the payment of such tax or assessment as a payment on the amount loaned or secured.

sec. 7. To assist in the work of assessment, the recorder is required to transmit annually to the assessor a complete abstract of all mortgages remaining unsatisfied on the records of his office; this abstract to embrace all information requisite for the assessor. If partial payment has been made, the owner is authorized to make the proper deductions. This information would be of use to the assessor only in cases where no agreement had been entered into between the debtor and creditor as to the payment of the taxes.

Colorado

Constitution, 1876, art. 10, sec. 3. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

Present Law. Mills' St., 1905, sec. 3806. In Colorado mortgaged property is taxed to the mortgagor and the mortgagee as such is exempt. Whenever any property within the state is mortgaged, the property and the notes, mortgage, deed of trust, trust deed, contract or other conveyance is to be assessed as a unit; the value of this unit for assessment purposes is to be equal to the value of the property only. Such contracts are not to be otherwise returned or assessed. sec. 3924o. If the mortgagor fails or neglects to pay the tax, the mortgagee may pay it and include the amount with interest in any judgment rendered on the mortgage.

Connecticut

History. In the session laws of Connecticut for 1836–37 (c. 12, sec. 2) a statement may be found to the effect that mortgages were to be taxed to the owner as personal property. By 1852 it would seem that the custom had grown up of taxing mortgages as an interest in the property. At least the law stated that whenever in the making of any tax list, any real

estate was omitted or abated because of any indebtedness secured by a mortgage, the indebtedness was to be taxed in the town or district in which the real estate was situated. (Laws, 1852, c. 67, sec. 1.) If the creditor was a resident of the town or district in which the mortgaged property was situated, the amount deducted from the value of the property because of the mortgage debt was simply added to his list, but if he was a non-resident, a statement of his credits was made out and notice sent. He might then appear before the assessors or board of relief and show cause why such indebtedness should not be taxed to him. (Laws, 1852, c. 67, sec. 2.) A law somewhat similar was passed in 1865 (c. 93, sec. 1), and in 1867 it was provided that no greater amount of indebtedness was to be deducted from the list of any person than the assessed value of the property for which the indebtedness was contracted. (Laws, 1867, c. 25.)

The present law, the main provisions of which were passed in 1875 (c. 27), carried out the ideas introduced much earlier and provided for the taxation of mortgages as an interest in the real estate to an amount equal to the assessed value of the mortgaged land.

Constitution, 1818, art. 1, sec. 11. The property of no person shall be taken for public use without just compensation therefor.

Present Law. Gen. St., 1902, sec. 2319. Money lent at interest and secured by a mortgage which contains an agreement that the borrower is to pay the

taxes, is to be exempt from taxation to an amount equal to the assessed value of the mortgaged land. The excess of any such loan over the value of the real estate is assessed and taxed in the town where the lender resides.

sec. 2323. Money secured by mortgage upon real estate, where there is no agreement that the borrower shall pay the taxes, is assessed to the owner, but is assessed in the town where the real estate is situated and not at the residence of the mortgagee.

sec. 2326. The rule that tax payers need not list property located outside of the state if they can prove that such property has already been assessed, does not apply to money loaned at interest to non-residents. Such property must be listed.

Laws, 1907 (c. 160 as amended by c. 253, Laws, 1907). The Connecticut law contains a provision which permits any person to take or send any note, bond, or other chose in action, or a description of it, to the state treasurer, and pay a state tax of 2 per cent on the face amount for five years, or for a longer or shorter time at the same rate. The treasurer makes an endorsement upon the contract or gives a receipt stating that the tax has been paid. The instrument is then exempt from all other taxes. The state treasurer classifies all notes, bonds, choses in action upon which the state tax has been paid according to assessment districts, and sends these lists to the town clerks.

Delaware

History. Laws, 1897 (c. 381 as amended by c. 25, Laws, 1898). It was the duty of the assessor to list for state and county purposes, at three-fourths of their value, all investments paying interest or yielding an income. Mortgages were included under investments. All such property, whether situated within the state or elsewhere, whether owned or held in trust, was to be assessed, unless it was taxed in some other state or county. It was declared to be the intention of the act to tax the owner and not the borrower or debtor, and any person asking, demanding, contracting for, or receiving any money or consideration on account of the tax or in reduction of the tax, or any person who imposed or tried to impose the tax or any part of it upon a debtor, was to be deemed guilty of a misdemeanor and subject to a heavy fine.

Where the creditor was a non-resident, the debtor was liable for the tax in the first instance, but must deduct the amount paid from the interest due or accruing on the debt. If the creditor refused to allow this deduction, he was to forfeit all the accrued interest and the debtor was not to make any payment to a creditor living outside of the state until the tax had been paid.

Railroads and other companies paying a stipulated tax in lieu of all other taxes were not included under the provisions of the law.

The tax amounted to thirty cents on the one hundred dollars of the assessment as made and returned by the assessor, and, as a rule, one-fourth of the money

collected from this source went to the state, and three-fourths to the county.

In the case of E. G. & T. Co. v. Donahoe (3 Pennewill's Del. Rep. 191, 1901) the court held this law unconstitutional. The original act was for the purpose of equalizing taxation for state and county purposes. The amendment considered municipal taxation as well without proper designations in the title. The court held that so much of the amending act as related to taxation for municipal purposes was unconstitutional and void under the constitution because not embraced within the title of the act, and that since the unconstitutional part could not be separated from the residue without emasculating the statute, that, therefore, the act as amended was unconstitutional and void.

Constitution, 1897, art. 8, sec. 1. "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the general assembly may by general law exempt from taxation such property as in the opinion of the general assembly will best promote the public welfare."

Present Law. Since the law of 1897 (c. 381 as amended by Laws, 1898, c. 25) was declared unconstitutional, the general assembly has not authorized a tax on mortgages. They are exempt by neglect rather than by special provisions of the law.

Florida

Constitution, 1885, art. 9, sec. 1. The legislature shall provide for a uniform and equal rate of taxa-

tion, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

Present Law. Gen. St., 1906. In Florida mortgages are taxed as personal property. Both real and personal property are subject to taxation (sec. 428). Credits are included under personal property (sec. 432), and are defined to mean every claim and demand for money. The assessment roll should contain a statement of all mortgages except those given for purchase money (sec. 512).

Georgia

Constitution, 1877, art. 7, sec. 2, par. 1. "All taxes shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

Present Law. Code, 1895, Mortgages in Georgia are taxable as personal property. Both real and personal property are subject to taxation (sec. 767), and tax payers are required to make a return of the gross value of their notes and other obligations for money (sec. 833).

Idaho

Constitution, 1889, art. 7, sec. 5. "All taxes shall be uniform upon the same class of subjects within the

territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: Provided, That the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just."

Present Law. Laws, 1907, p. 178. In Idaho the legislature took advantage of this provision and exempted all dues and credits secured by mortgage, trust deed, or other lien. This law has been in force since 1895. (Laws 1895, p. 48.)

Illinois

Constitution, 1870, art. 9, sec. 1. "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

Present Law. Rev. St., 1905, c. 120. In Illinois mortgages are taxable as personal property. Every person is required to list all moneys loaned by him as owner or agent (sec. 6). Where a deed for real estate is held for the payment of a sum of money, the sum thus secured is considered personal property and is listed and assessed as credits (sec. 21); personal property, like real estate in Illinois, is assessed at one-fifth of its listed value (sec. 312). The usual deduction of debts from credits is allowed (sec. 27).

Indiana

Constitution, 1851, sec. 193. The general assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal.

Present Law. Ann. St., 1901, vol. 3, sec. 8417a, as amended by Laws 1903, c. 27, sec. 36. In Indiana mortgagors may have the amount of the mortgage indebtedness, not exceeding seven hundred dollars, still unpaid on the first day of March, deducted from the assessed valuation of the mortgaged premises for that year, and the amount remaining after the deduction has been made is to form the basis for assessment for the real estate. In no case is a deduction to be allowed greater than one-half of the assessed value of the real estate.

sec. 8417b. Any person wishing to avail himself of the provisions of the law is required to file with the auditor of the county where the estate is situated, a sworn statement of the amount of the mortgage indebtness unpaid on the first of March. The mortgagor must also give the name and residence of the mortgagee, assignee, owner, or holder of the mortgage, together with the record and page where the instrument is recorded and a brief description of the real estate given as security.

sec. 8417c. Where the mortgage indebtdness is liable for taxation in a county other than the one in which the real estate is situated, it becomes the duty

of the auditor to certify and transmit a copy of this sworn statement as made by the mortgagor to the auditor of the county where the mortgagee, assignee, or holder of the mortgage resides.

Court Decisions. In a case brought into the Supreme Court to test the constitutionality of the law, the court held that the act of 1899 authorizing the deduction for the purpose of taxation, of mortgage indebtedness, not exceeding $700, from the assessed valuation of real estate, such deduction not to be greater than one-half of the assessed valuation thereof, was not violative of the provisions of the state constitution requiring equality and uniformity in taxation, nor of the fourteenth amendment of the United States constitution relative to the right to the equal protection of the laws. State, ex rel. v. Smith, 158 Ind., 543, 1901.

Iowa

Constitution, 1857, art. 1, sec. 18. Private property shall not be taken for public use without just compensation first being made.

Present Law. Code, 1897. The system of double taxation of mortgages prevails in Iowa (sec. 1308, 1310). In order to get a more complete assessment of property, and especially of debts secured by mortgages, a law usually known as the tax ferret law was enacted. The present law was passed in 1900 (Laws, 1900, c. 50), Supp. to code, 1907, sec. 1407a and provides that the board of supervisors of any county may

contract in writing with any person to assist the proper officers in the discovery of property not listed and assessed as required by law. The total charges, fees, and expenses, are not to exceed fifteen per cent of the taxes paid into the county treasury.

Court Decisions. A case was brought to compel a bank to pay taxes on its moneys and credits. The sum which was given under the heading, "Moneys and Credits" was intended to represent the difference as returned by the assessor and the par value of the capital stock of the bank. The court held that where property had been listed and assessed by the assessor, a county treasurer has no authority to enter an additional assessment based on the difference between the assessed value and the actual value as found by him. Savings Bank v. Trowbridge, 124 Ia. 514, 1904.

Kansas

Constitution, 1859, art. 11, sec. 1. "The legislature shall provide for a uniform and equal rate of assessment and taxation."

Present Law. St., 1905...In Kansas mortgages are taxable as personal property. Both real and personal property are subject to taxation (sec. 8230), and personal property is defined to include mortgages and all evidences of debt secured by lien on real estate (sec. 8231). The abstract of the assessment roll which is forwarded to the state auditor by the county clerk contains a statement of the amount of mortgages held in the county (sec. 8340).

Kentucky

Constitution, 1891, sec. 171. "Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws."

Present Law. St., 1903, Acts, 1906. In Kentucky mortgages are taxable as personal property. Both real and personal property are subject to taxation (sec. 4020). The amount of notes secured by mortgages is included in the schedule which the tax payer is required to fill out. This schedule gives the value as fixed by the person assessed and by the assessor (sec. 4058).

Each county clerk is required to make out a list of all purchase money notes, mortgage notes, and other obligations for money due, except those owned by banks or trust companies. This list is to be sent to the county assessor and is to contain all the information necessary to enable the assessor to place such forms of property on the assessment roll. No mortgage or assignment is to be recorded unless the residence and post office address of the owner or holder is given. Acts, 1906, c. 22, art. 2, sec. 10.

Louisiana

Constitution,[1] 1898, art. 225. Taxation shall be equal and uniform throughout the territorial limits of the

[1] A constitutional amendment is now pending, providing for the exemption of mortgages from taxation.

authority levying the tax, and all property shall be taxed in proportion to its value, to be ascertained as directed by law.

Present Law. Rev. Laws, 1904, vol. 2, p. 1541, sec. 1; p. 1548, sec.10. In Louisiana mortgages are taxable as personal property. Property subject to taxation includes money loaned at interest and the assessors are required to examine the records for such taxable property.

Mortgage notes, and indebtedness and all evidences of indebtedness are taxable only at the situs and domicile of the holder or owner. (Laws of 1908, act 170.)

Maine

Constitution, 1819, art. 9, sec. 8. "All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally according to the just value thereof."

Present Law. St., 1903, c. 9. In Maine mortgages are taxed as personal property. Personal estate for the purpose of taxation includes money at interest and all obligations for money (sec. 5).

Maryland

History. In 1874 (c. 483, sec. 2) Maryland passed a law exempting mortgages from assessment and taxation; the law was repassed in 1880 (c. 122, sub. sec. 2, 3) and the exemption was made to apply only to mortgages on property wholly within the state. The law requiring all mortgages without exception to pay

an eight per cent gross receipt tax was passed in 1896 (c. 120) and remained in force until 1904 (c. 405) when it was repealed in so far as it applied to certain enumerated counties and to Baltimore City and in the other counties where the law still remained in force all the revenue was to go to the county and not three-fourths to the county and one-fourth to the state, as formerly. Later (1906, c. 794) Dorchester was again placed in the list of counties where the income tax from mortgages was to be collected.

Constitution, 1867, as amended, Dec'aration of Rights, art. 15. Every person in the state, or person holding property therein ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property.

art. 3, sec. 51. The general assembly may by law provide for the taxation of mortgages upon the property in this state and the debts secured thereby in the county or city where such property is situated.

Present Law. St. 1904, vol. 2, art. 81, sec. 183. All mortgages in Worcester, Wicomico, Somerset, Carroll, Howard, Montgomery, Frederick, Washington,[1] Garrett,[2] and Dorchester counties are required to pay annually a tax of eight per cent upon the gross amount of interest covenanted to be paid each year on mortgages held by them. The tax is due and payable in the county where the mortgage is recorded and

[1] Not included in law as passed in 1908.
[2] The exact status of the law with regard to Garrett county is doubtful (1908).

all the taxes collected from this source are to be applied exclusively for county purposes (Laws, 1906, c. 793, sec. 1). Mortgages recorded for only a part of the year pay taxes in proportion to the time recorded (sec. 184).

Any contract contained in a mortgage executed after the passage of the law in which the mortgagor agrees to pay any or all taxes on the mortgage, debt, or the interest covenanted to be paid, is to be null and void (sec. 185), and mortgagees are required to take oath that they have not required and will not require the mortgagor or any person for him to pay the tax as levied. This oath is to be repeated if the mortgage is assigned at any time (sec. 186). Any mortgagor paying the tax that should have been paid by the mortgagee, is entitled, upon satisfactory proof, to have the amount paid with interest at 6 per cent deducted from the mortgage debt (sec. 188).

The clerk of the circuit court in the counties where the law applies, is required to render to the board of county commissioners a list of all mortgages recorded, released, and assigned during each month; this list to contain all the information necessary to enable the board to levy the tax. If the mortgagee refuses to pay the tax when due, his interest may be sold in the same manner as other property is sold for taxes (sec. 187).

Massachusetts

History. The present law is but a modification of the law as passed in 1881 (Laws, 1881, c. 304).

Constitution, 1780, Pt. Second c. 1, sec. 1, art. 4. The general court has power to impose and levy proportional and reasonable assessment, rates, and taxes, upon all the inhabitants of, and persons resident and estate lying, within the said commonwealth.

Present Law. Rev. Laws, 1902, c. 12 and 13. In Massachusetts mortgages are taxed as an interest in the real estate, and the parties to the mortgage may enter into a contract as to the payment of the taxes.

c. 12, sec. 16. If any person has an interest in real estate, not exempt from taxation, as holder of a duly recorded mortgage, the amount of his interest is to be assessed as real estate in the place where the land lies, and the mortgagor is to be assessed only for the value of the real estate, after deducting the assessed value of the interest of the mortgagee. If the estate is situated in two or more places, the amount of the mortgagee's interest assessed in each is to be in proportion to the assessed value of the land given as security.

c. 12, sec. 17. The mortgagee's interest in the real estate is not to be assessed at a greater sum than the fair cash valuation of the land and buildings.

c. 12, sec. 45. The mortgagor or mortgagee may bring to the assessor of the city or town where the real estate lies, a statement, under oath, of the amount secured, together with the name and residence of every holder of an interest therein, either as mortgagor or mortgagee.

c. 13, sec. 36. If a mortgagee of land situated in the place of his residence gives a written notice to

the collector that he holds a mortgage on certain described land, the demand for payment is to be made on the mortgagee instead of the mortgagor.

c. 13, sec. 64. When the mortgagee pays taxes that should have been paid by the mortgagor, the amount paid is added to the obligation; and when the mortgagor pays taxes that should have been paid by the mortgagee, the amount paid is deducted from the mortgage debt, unless in either case the parties have otherwise agreed in writing.

Michigan

History. According to the law of 1882 (Acts no. 9, sec. 13) and the law of 1885 (Acts no. 153, sec. 13) mortgages were required to be listed as personal property. The mortgage was taxed in the same manner in 1887, Acts no. 262, but a more determined effort was made to get all the mortgages in the state. The plan followed was to have the registers of deeds report all mortgages recorded in their offices, to the supervisors and assessing officers of their respective counties, and to the registers of deeds of other counties where the mortgagee had his place of residence. In 1891 (Acts no. 200) a law was passed providing that mortgages were to be taxed as an interest in the real estate, and that each party should pay taxes on his respective interest. Nothing was contained in the law forbidding contracts. In a case brought under this law, the court held that it was constitutional and that the mortgagor would, as under former statutes, be

bound to pay the entire tax, subject only to the relief afforded him if the tax assessed against the mortgage interest was paid by the mortgagee, and that there was no obstacle in the act to prevent an agreement by the mortgagor to pay all taxes which might in the future be assessed against all interests in real property owned by him, including the interest as granted by the mortgagee. (Common Council v. Assessors, 91 Mich. 78, 1892.) The court also held that it was within the power of the parties to the mortgage to enter into an agreement that the mortgagor should pay the taxes assessed against the property, and that it was not the purpose of the legislature to limit that power. (Latham v. Board of Assessors, 91 Mich. 509, 1892.)

The law of 1891 was repealed in 1893 (Laws, no. 206) and the old law providing for the taxation of mortgages as personal property reenacted. The contract that the mortgagor is to pay all taxes on the mortgage or indebtedness secures, is very common in the mortgage forms in Michigan at the present time. The court has held that a covenant in a mortgage to pay all taxes levied upon the mortgaged property, "or upon or on account of this mortgage or the indebtedness secured hereby," is an agreement to pay the personal tax assessed against the mortgagee on account of the mortgage, and that an agreement by a mortgagor to pay the taxes assessed upon the mortgage as the personal property of the mortgagee is usurious where the lender knew that the aggregate of interest

and taxes would exceed the maximum rate of interest allowed by statute, but it is not usurious where he believed it would not exceed that rate. (Green v. Grant, 134 Mich. 462, 1903)

Michigan

Constitution, 1850, art. 14, sec. 11. The legislature shall provide a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.

Present Law. Complied Laws, 1897. In Michigan mortgages are taxable as personal property. (sec. 3824, 3831)

Minnesota

Constitution, art. 9, sec. 1. The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes. (Amendment passed in 1906)

Present Law. Laws, 1907, c. 328. In Minnesota mortgages are subject to a registration tax of fifty cents on the one hundred dollars, or major fraction thereof. A mortgage is defined as any instrument creating or evidencing a lien of any kind on real property, real estate, or land, given or taken as security for a debt, even though such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land is also treated as a mortgage, the unpaid balance to be considered as the face value. The law does not apply to correction

mortgages, mortgages taken in good faith by persons or corporations whose personal property is expressly exempt from taxation by law, or to mortgages of persons or corporatioins whose property is taxed upon the basis of gross earnings, or other method of commutation in lieu of all other taxes.

The tax imposed amounts to fifty cents on each one hundred dollars, or major fraction thereof, of the principal debt or obligation secured by real property situated within the state.

If the real estate given as security is situated partly within and partly without the state, the tax imposed by the state of Minnesota is in the proportion that the value of the real estate within the state bears to the value of the entire property given as security, and if the real property given as security is situated in more than one county of the state, the entire tax is first paid in the county where the mortgage is presented for record, and then this amount is divided between or among the counties in the same ratio as the assessed value of the real property covered by the mortgage in each county bears to the assessed value of all the property described in the mortgage. In the case of a mortgage given in trust, to secure the payment of bonds or other obligations to be issued, a statement may be incorporated, showing the amount already issued or to be issued forthwith. The tax is computed upon this amount and no obligations issued in excess of this aggregate are to be valid for any purpose unless

the additional tax is paid and the receipt properly endorsed.

All mortgages together with the debts or obligations secured and the papers evidencing such debts, are to be exempt from all other taxes if the provisions of this law have been complied with, but the payment of this tax does not exempt such property from the operations of the law relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies.

The tax imposed by this act is paid to the treasurer of the county in which the mortgaged land or some part of it, is situated. A receipt showing that the tax has been paid is endorsed on the mortgage by the treasurer, is countersigned by the county auditor and then the mortgage together with the receipt is recorded by the register of deeds. Neither the mortgage, papers relating to its foreclosure, nor any assignments or satisfaction is to be registered, unless the tax has been paid, and in addition to this, neither the mortgage nor any record of it is to be received as evidence in any court or to have any validity as notice unless the provisions of this act have been complied with.

All mortgages recorded prior to April 30, 1907, may become taxable under the provisions of this law if the owner pays the tax upon the amount of the debt secured and obtains the treasurer's receipt showing that the payment has been made. This receipt is then recorded on the margin of the mortgage record.

The taxes paid to the county treasurers are to be apportioned and distributed in the same manner as the real estate taxes paid upon the real estate described in the mortgage.

Mississippi

Constitution, 1890, sec. 112. Property shall be assessed for taxes under general laws and by uniform rules according to its true value.

Present Law. Code, 1906, secs. 4258, 4266. Mortgages in Mississippi are taxable as personal property. Money loaned at interest either within or without the state, is to be assessed and taxed to the owner at his place of residence.

Missouri

History. A joint resolution was drawn up in 1899 (Laws, 1899, p. 383) providing for an amendment to the constitution whereby mortgages and mortgaged property were to be taxable under a law very similar to the California law of 1879. This amendment was adopted by the people in 1900 (Laws 1905, p. 315). In a case arising under the law the court held that this amendment so discriminated between corporations and persons—a corporation being for the purpose of taxation a "person" within the fourteenth amendment—as to deny to railroads and other quasi public corporations "the equal protection of the law," in that it required the value of farm lands to be lessened, for taxation purposes, by the value of such security, but

did not permit the value of the property of such corporations to be decreased by the value of their bonded and other indebtedness. The constitutional provision was held unconstitutional. (Russell v. Croy, 164 Mo. 69, 1901)

A California case involving the same question was declared constitutional (C. P. R. R. Co. v. Board of Equalization, 60 Cal. 35, 1882), and unfortunately when a group of similar California cases were carried to the Supreme court of the United States they were decided upon other grounds. (118 U. S. 394. See also 18 Fed. Rep. 385.) After the law was declared unconstitutional in Missouri a joint resolution was passed in 1901 to repeal it (Laws 1901, p. 261), and it was repealed by a vote of the people in 1902 (Laws 1905, p. 317).

Constitution, 1875, art. 10, sec. 3. Taxes may be levied and collected for public purposes only, they shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

sec. 4. All property subject to taxation shall be taxed in proportion to its value.

Present Law. Ann. St. 1906. In Missouri at the present time mortgages are taxable as personal property. The term "credits" is defined to include all money loaned and all indebtedness by deed, contract, mortgage or pledge of property of whatsoever kind, (sec. 9123), and the list of every taxable person must

contain an aggregate statement of all solvent notes secured by mortgage or deed of trust (sec. 9144).

The county recorders are required to keep a mortgage list with such information as may be necessary to enable the assessor to place all mortgages on the assessment rolls (sec. 9173).

Montana

Constitution, 1889, art. 12, sec. 2. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

Present Law. St. 1895. In Montana mortgages are taxable as personal property. The term "credits" is defined to mean those solvent debts, secured and unsecured, owing to a person (sec. 3680, 6th.). The assessor must require a statement under oath from each person; this statement to contain a list of all mortgages held by them (sec. 3701.). As an aid in the work of assessment the county clerk is required to transmit annually to the assessor a complete abstract of all unsatisfied mortgages, deeds of trust, contracts, and other obligations, by which any debt is secured. If the property given as security is located in more than one county, it is the duty of the assessor to transmit such information to the state board of Equalization. The board then fixes the proportional value to be assessed in each county. Similar difficulties arising

within the county are settled by the assessor (secs. 3786, 7).

Nebraska

Constitution, 1875, art. 9, sec. 1. The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its, property and franchises.

Present Law. Ann. St., 1903. In Nebraska mortgages are taxable as personal property. Property owners are required to list all moneys vested or loaned by them, either as principal or agent. (sec. 10427). In Nebraska according to law, the actual value of the taxable property is ascertained, but it is only assessed at 20 per cent of such valuation (sec. 10411).

It is the duty of the register of deeds, county clerk, county judge, clerk of the district court, and all other county officers, to assist the county assessor in the examination of the records of their respective offices, and to give to the county assessor any information in their possession that will assist him in his work of assessment (sec. 10513).

Nevada

Constitution, 1864, art. 10, sec. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation.

Present Law. Comp. Laws, 1900. In Nevada

mortgages are taxable as personal property. The term "personal property" includes all moneys at interest secured by mortgage or otherwise (sec. 1082).

Court Decisions. The court has held that a debt secured by mortgage is subject to taxation, although the mortgagee is indebted to an amount equal to or exceeding the amount of his mortgage; (Drexler v. Tyrrell, 15 Nev. 114, 1880) and that the legislature under the constitution, cannot exempt money at interest secured by mortgage (State v. Carson Savings Bank, 1882, 17 Nev. 146).

New Hampshire

Constitution, 1792 as amended 1902. Part second, art. 6. The Public Charges of Government or any part thereof may be raised by taxation upon polls, estates, and other classes of property, including franchises and property when passing by will or inheritance.

Present Law. St. 1901, title 9, c. 55, sec. 7. In New Hampshire mortgages are taxable as personal property. Personal property liable to taxation includes money on hand or at interest more than the owner pays interest for, money loaned on any mortgage, pledge, obligation, note, or other security, whether on interest or interest to be paid or received in advance.

New Jersey

History. In New Jersey, legislation relating to mortgage taxation began as early as 1868. All mort-

gages on real and personal property within Passaic, Morris, Hudson, Union and Essex counties, and within the city of New Brunswick were to be exempt from taxation in the hands of any inhabitant of the state (c. 382). It would seem that mortgages in the other counties were to be taxed and that real and personal property was to be assessed at its full and fair value without any deduction for mortgages (c. 523).

The next year (1869) a law was passed (c. 511) providing that all mortgages upon real estate, chattels or personal property taxable by law in Hudson, Union, and Essex counties, in the county of Passiac, except the townships of West-Midford, Pompton and Wayne, and in the city of New Brunswick, were to be exempt from taxation when held by any inhabitant, corporation or association residing or located in the counties or cities enumerated, but were not to be exempt when held by any inhabitant, corporation, or association residing or located in any other county or place in the state.

In 1876 it was made lawful for the owners of lands situated in the counties of Hudson, Essex, Union, Bergen, and Passaic, and the cities of Trenton, New Brunswick, and Camden, to agree with the holders of any mortgage then in existence or thereafter made not to apply for any deduction from the taxable value of the lands given as security because of any mortgage (c. 121, sec. 1). In cases where agreements had been entered into and broken, the mortgage was to become due and payable and the amount which the mort-

gagee paid in taxes was to be added to the principal of the debt with interest (c. 121, sec. 2).

In the same year a general law was passed (Laws, 1876, c. 122) stating that no mortgage was to be assessed for taxation unless a deduction has been claimed by the owner of the land and allowed by the assessor. If the mortgage was separately assessed, it was to be taxed in the township or city where the mortgaged land was situated.

A similiar law, more definite and more carefully drawn, was passed in 1893, the main provisions of which were as follows: that no mortgage on real or personal property, or both, whether given by individuals or corporations, or the debt—secured by such mortgages, was to be assessed for taxation unless a deduction had been claimed by the owner of the mortgaged property and allowed by the assessor (c. 283). This law was repealed in 1903 (c. 209) and another law enacted (c. 208, sec. 10). The law as passed in 1903 was amended in 1904 and again in 1905 (Laws, 1904, c. 112, sec. 10; 1905, c. 161) and is now the present law of the state.

Constitution, 1844, art. 4, sec. 7, par. 12. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

Present Law. Laws, 1903, c. 208, sec. 10, as amended by Laws, 1904, c. 112 and Laws, 1905, c. 161. No mortgage or debt secured by mortgage on real property which is taxed in the state is to be listed for taxation, and no deduction from the assessed value

of the real property is to be made by the assessor on account of any mortgage debt, but instead the mortgagor is entitled to credit on the interest payable on the mortgage for as much of the tax as is equal to the tax rate applied to the amount due on the mortgage. Exception is made to this rule where the parties have otherwise agreed, or where the mortgage is an investment of funds not subject to taxation, or where the parties have lawfully agreed that no deductions shall be made from the taxable value of the lands by reason of the mortgage. Mortgages and debts secured by mortgages on property exempt from taxation are also to be exempt.

New Mexico

Compiled Laws, 1897. Property under mortgage or lessor, unless it is listed by the mortgagee, or lessee (sec. 4022).

New York

History. In New York mortgages used to be taxed as personal property (Laws 1896, c. 908). In 1905 (c. 729) an annual tax of five mills was imposed on each dollar of the amount of the principal debt or obligation secured. After the necessary expenses were paid, the amount remaining was distributed equally between the county and the state. At the present time a recording tax of fifty cents on the one hundred dollars, or major fraction thereof, is levied. This law was passed in 1906 (c. 532) and amended in 1907 (c. 340).

Present Law. Laws, 1906, c. 532 and Laws, 1907, c. 340.

Laws, 1907, c. 340, sec. 290. Under the New York law the word mortgage is defined to include every mortgage on real property, mortgages where part of the security is personal or other property, executory contracts, and contracts or agreements by which the indebtedness secured is added to or increased.

Laws, 1907, c. 340, sec. 293—b. This definition does not include correction mortgages or mortgages in which additional security is given but the debt is not increased.

Laws, 1907, c. 340, sec. 293. The recording tax imposed amounts to fifty cents for each one hundred dollars, or major fraction of the principal debt or obligation secured. The exemptions of the minor fraction does not hold for mortgages of less than one hundred dollars, all mortgages no matter how small must pay a recording tax of at least fifty cents.

Laws, 1907, c. 340, sec. 293—a. As a rule holders of mortgages made prior to July 1, 1906, may pay the recording tax and have their mortgages exempt from the personal property tax which they would otherwise be subject to.

Laws, 1907, c. 340, sec. 293—c. Mortgages for indefinite amounts or for contract obligations are taxed as if equal in amount to the property given as security, unless the owner files with the recording officer a sworn statement of the maximum amount secured or which, under any contingency, may be secured by the

mortgage. If this is done, the amount given in the sworn statement is taken as the basis for assessment.

Laws, 1906, c. 532, sec. 294. When any mortgage is recorded, a receipt showing that the tax has been paid is recorded with the instrument.

Laws, 1907, c. 340, sec. 295. No mortgage of real property which is subject to taxation is to be released, discharged of record or received in evidence in any action or proceeding, no assignment of or agreement extending any mortgage is to be recorded, and no mortgage is to be foreclosed unless the taxes have been paid as provided by law.

Laws, 1907, c. 340, sec. 296. Mortgages made by corporations in trust to secure the payment of bonds or obligations issued or to be issued thereafter, may contain a statement of the amount advanced, or accrued, or which is then secured by the mortgage; the tax payable on the recording of the mortgage is then computed on the basis of the amount stated to be secured. Whenever an additional amount is to be advanced under the original mortgage, a statement must be filed and the additional taxes paid.

Laws, 1907, c. 340, sec. 297. When the property given as security is located in more than one county, or partly within and partly without the state, the state board of tax commissioners determines the proportion of the tax that should go to each county or to the state of New York.

Laws, 1907, c. 340, sec. 298. The first of each month the recording officer of the county pays to the

county treasurer, after deducting the necessary expenses of his office as allowed by the act, all moneys received from taxes on mortgages. In the counties of New York, Kings, Queens, and Richmond, the money is paid to the chamberlain of the city of New York. The treasurers of the counties and the chamberlain of the city of New York, after deducting the necessary expenses of their offices, transmit one-half of the net amount collected to the state treasurer. The remaining portion in the counties of New York, Kings, Queens, and Richmond, is to be paid into the general fund of the city of New York to be applied to the reduction of taxes, and in the other counties, the remaining portion is to be held by the respective county treasurer subject to the order of the board of supervisors. In the end this money is used for the payment of school taxes and for state, county, city, village, and town expenses.

Laws, 1906, c. 532, sec. 300. The state board of tax commissioners has general supervisory powers over all recording officers and may make such rules and regulations as it deems proper and the state comptroller has general supervisory powers over all county treasurers and the chamberlain of the city of New York.

North Carolina

Constitution, 1876, art. 5, sec. 3. Laws shall be passed taxing, by uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or

otherwise; and also all real and personal property, according to its true value in money.

Present Law. Laws, 1907, c. 258, secs. 14, 32. Mortgages are taxable as personal property.

North Dakota

Constitution, 1889, sec. 176. Laws shall be passed taxing by uniform rule all property according to its true value in money.

Present Law. Rev. Codes, 1905. Mortgages are taxable as personal property in North Dakota. Both real and personal property are taxable (sec. 1481) and credits are defined to include all claims and demands secured by deeds or mortgages, due or to become due (sec. 1480). The amount of credits is an item included in the list which the tax payer is required to make out (sec. 1496).

Ohio

Constitution, 1851, art. 12, sec. 2. Laws shall be passed taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money.

Present Law. Ann. St., 1906. Mortgages in Ohio are subject to taxation as personal property. Both real and personal property is taxable (sec. 2731) and tax payers are required to list all money loaned on pledge or mortgage of real estate, although a deed or other instrument may have been

given, if the deed or other instrument is considered merely as security (sec. 2734).

If any person required to list property fails to do so or only returns a portion of his taxable property, the county auditor must ascertain as near as practicable the true value of the property that ought to have been listed for a period not exceeding five years next preceding the year in which the inquiries and corrections were made. The amount for each year is multiplied by the tax rate for that year and the owner taxed for the whole amount (sec. 2781a). A penalty of fifty per cent was added for omitted property (sec. 2781). The court held that that part of the law was invalid but maintained that it could be disregarded without affecting the validity of the statute in other respects (Gager Treas. v. Prout, et al., 48 O. S. 89, 1891).

Oklahoma[1]

Constitution, 1907, art. 10, sec. 5. The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects.

Oregon

History. In 1882 a law was passed (p. 64) providing that the mortgage and the mortgage debt were, for the purposes of assessment and taxation, to be treated as land or real property; both the mortgage and the debt were to be assessed and taxed to the mortgagee

[1] 1908 Laws not yet obtainable.

in the county, city, or district, in which the land or real property given as security was situated. This law applied only to mortgages secured by property located within a single county, and not to mortgages secured by property partly within and partly without the county. All such mortgages were to be void.

A mortgage lawfully made was to be considered as an indebtedness and the mortgagor was entitled to the same deduction from his assessment as other debtors.

The circuit court of Oregon declared the law unconstitutional in the case of Dundee, etc. Co. v. School District (10 Sawyer 52, 1884). The court maintained that an act which provided for the taxation of mortgages on land in *no* more than one county, there being mortgages on land in more than one county was void for want of uniformity required by sec. 1 of art. 9 of the constitution of the state. This law was amended (Laws, 1885, p. 9), so that mortgages issued by railroad corporations were to be legal, even if the land given as security was situated in more than one county. Later (Laws, 1889, p. 30) this same provision was made applicable to mortgages given by corporations manufacturing iron or steel or working any iron, gold or silver mines.

During 1893 session of the legislature (Laws, 1893, p. 6) the entire mortgage tax law was repealed and no deduction of indebtedness from assessment was to be allowed in any case.

Many interesting cases have arisen under the law of 1882. In one case (Munford v. Sewell, 11 Ore-

gon 67, 1883) the court held that the state had power to tax a mortgage as such, in the county where recorded, irrespective of the residence of the owner of the mortgage, and that all law taxing mortgages owned by non-residents did not impair the obligation of contracts, whether the mortgage contracts were made before or after the passage of the law. The court maintained that the security could not be enforced in any other jurisdiction and that the question was wholly one of power, and, since the power of the state over the mortgage was as exclusive and complete as over the land mortgaged, the mortgage was subject to taxation by the state, unless there was a constitutional limitation to the contrary.

In the case of Savings and Loan Society v. Multnomah county (169 U. S. 421, 1898) the supreme court of the United States held that the statute of Oregon of 1882 taxing mortgages on land in that state to the mortgagees in the counties where the land lay, did not, as applied to mortgages owned by citizens of other states and in their possession outside of the state of Oregon, contravene the fourteenth amendment of the constitution of the United States. The court further held that the result of the law was that nothing was taxed but the real estate mortgaged, the interest of the mortgagee therein being taxed to him, and the rest to the mortgagor.

Constitution, 1859, art. 9, sec. 1. The legislative assembly shall **provide by law for** uniform and equ rate of assessment and taxation; and shall prescribe

such regulations as shall secure a just valuation for taxation of all property, both real and personal, (excepting such only as may be especially exempted by law).

Present Law. Laws, 1907, c. 268. In Oregon at the present time mortgages are taxable as personal property (sec. 1, 3).

Pennsylvania

Constitution, 1874, art. 9, sec. 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Present Law. Dig. 1894, vol. 2, p. 1963. ff. sec. 1, 2. All personal property—mortgages are specifically mentioned—owned, held, or possessed, by any person or corporation, is taxable annually for state purposes at the rate of four mills on each dollar of its value.

sec. 3, 6. Tax payers are required to make a return under oath, showing the property held, owned, or possessed by them in their own right, or in any other capacity. If they refuse to make out this return properly verified by oath, the assessor must make it out from the information he is able to obtain, and after this list is revised and corrected by the county commissioners or board of revision, 50 per cent is added to form the aggregate amount for taxation.

sec. 8, 10. The register of deeds keeps a separate list containing detailed information relating to each mortgage recorded in his office, this list is filed each

month in the commissioner's office or with the board of revision of taxes. If the mortgagee resides in another county, a certified statement containing the information required for assessment is transmitted to the proper officers of the county where he does reside.

sec. 11, 12. The county commissioners, or board of revision of taxes, with the information in their possession, prepare statements and deliver them to the assessors showing the number and amount of mortgages held by each person within the different assessment districts of the county. With this list at hand, the assessor is able to compare and check up the returns made and sworn to by each person and corporation.

sec. 18, 19. The tax is collected and paid to the county and city treasurers, and they in turn pay it to the state treasurer. Three-fourths of the net amount collected from mortgages and other forms of personal property is returned to the counties for their own use.

sec. 26. It is unlawful for any person or corporation loaning money at interest to require the borrower to pay the taxes imposed by this act, and in all cases where the taxes are paid by the borrower, the law requires that such payments be deemed usury and punishable as such. This law was amended in 1899 (no. 39) and in 1905 (no. 134), but no material change was made.

Rhode Island

Constitution, 1842, art. 4, sec. 15. The general assembly shall, from time to time, provide for making

new valuations of property for the assessment of taxes, in such manner as they deem best.

Present Law. Laws, 1905, c. 1246. In Rhode Island mortgages are taxable as personal property. Both real and personal property are taxable (sec. 2) and personal property for the purposes of taxation is deemed to include debts due from solvent persons (sec. 5).

South Carolina

Constitution, 1895, art. 10, sec. 1. The general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal and possessory.

Present Law. Code of Laws, 1902, vol. 1, sec. 260, 268, 271. In South Carolina mortgages are taxable as personal property.

South Dakota

Constitution, 1889, art. 11, sec. 2. All taxes to be raised in this state shall be uniform on all real and personal property, according to its value in money.

Present Law. Rev. Code, 1903. Mortgages are taxable as personal property. Credits are held to mean and include all claims and demands secured by deeds or mortgages due or to become due (sec. 2052), and all resident tax payers are required to list all moneys and credits, moneys loaned or invested (sec. 2058).

Tennessee

Constitution, 1870, art. 2, sec. 28. All property real, personal or mixed, shall be taxed. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state.

Present Law. Laws, 1907, c. 602. Mortgages are included in the classification of all personal property liable to assessment (sec. 8, class 7). In a suit brought to collect any chose in action, if the defendant can prove that the holder did not give in such credit for taxation for the preceding year, the owner is to be taxed with all the court costs of the case (sec. 14).

Texas

Constitution, 1876, art. 8, sec. 1. Taxation shall be equal and uniform. All property in this state, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.

Present Law. Rev. St. 1897. Mortgages are taxable as personal property, and personal property for the purposes of taxation is deemed to include all moneys at interest due the person to be taxed over and above what he pays interest for, while the term "credits" means all demands secured by deed or mortgage (sec. 5063, 5064).

Utah

Constitution, 1895, art. 13, sec. 2. All property in the state, not exempt under the laws of the United States or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. (The word "property" includes money and credits.)

sec. 12. Nothing in this constitution shall be construed to prevent the legislature from providing a stamp tax or a tax based on income, occupation, licenses, franchises or mortgages.

Present Law. St. 1898, Laws, 1905. Mortgages are taxable as personal property. The assessor may require a statement of all solvent credits, secured or unsecured, from any person. He may deduct from the sum total of such credits only such debts secured or unsecured as may be owing by the person assessed (Laws, 1905, c. 125). The county recorders must transmit to the assessor of the county in which the mortgagee resides a complete abstract of all mortgages remaining unsatisfied on the records of his office, Statutes, (sec. 2531).

Vermont

Constitution, 1793, c. 1, art. 9. No part of any person's property can be justly taken from him, or applied to public uses, without his own consent, or that of the Representative Body of the freemen. Previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the

legislature to be of more service to the community than the money would be if not collected.

Present Law. St., 1906, sec. 504. Mortgages are taxable as personal property (sec. 559). The town clerk is required to prepare a statement of all mortgages, together with the amount secured, for the use of the listers.

Virginia

Constitution, 1902, art. 13, sec. 168. All property, except as herein provided, shall be taxed; all taxes whether state, local, or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Present Law. Laws, Ex. Session, 1903, c. 148. It would seem that mortgages are taxable in two ways in Virginia. First, all bonds, notes, and other evidences of debt, whether secured by deed of trust, judgment or otherwise, are subject to a tax of twenty-five cents on every hundred dollars of value for the expenses of government, and a further tax of ten cents on every hundred dollars of the value for the support of the free public schools (sec. 8 and 9). Second, every contract relating to real estate or personal property, whether it be a deed or not, is subject to a tax of fifty cents when admitted to record. When the consideration exceeds three hundred, but does not exceed one thousand dollars, the tax is to be one dollar and where the consideration exceeds one

thousand dollars, an additional tax of ten cents on every one hundred or fraction, is levied. Deeds of trust and mortgages given by railroad and other internal improvement companies are subject to the same tax. In the case of railroads the amount of the mortgage indebtedness, subject to the rate as levied, depends upon the proportional number of miles of the line within and without the state (sec. 13).

Washington

Constitution, 1889, art. 7, sec. 1. All property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law.

History. During the extraordinary session of the legislature held in 1901 (c. 2), a law was passed providing that mortgages and all credit for the purchase of real estate were not to be considered as property for the purposes of taxation. This law remained in force until the present law was enacted in 1907.

Present Law. Laws, 1907, c. 48. Under the present law all moneys and credits are exempt from taxation. The law states that all mortgages, notes, accounts, moneys, certificates of deposit, tax certificates, judgments, state, county, municipal, and school district bonds and warrants, are not to be considered as property for the purposes of taxation, and no deduction is to be allowed on account of an indebtedness owed.

West Virginia

Constitution, 1872, art. 10, sec. 1. Taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value.

Present Law. Code, 1906. In West Virginia mortgages are taxable as personal property (sec. 747, 794). Debts may be deducted from credits (Laws, 1907, c. 80, sec. 67).

Wisconsin

Constitution, 1848, art. 8, sec. 1. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe.

Present Law. Laws, 1903, c. 378. In Wisconsin, whenever any taxable real estate is subject to mortgage, the mortgage is deemed an interest in the real estate and assessed and taxed in the assessment district where the real estate is located. The interests of the mortgagor and mortgagee may be separately assessed, or at the option of the mortgagor, both may be assessed and taxed together. If separately assessed, the interest of the mortgagor is to be taken for only such amount as remains after deducting the assessed value of the interest of the mortgagee from the assessed value of the entire real estate, and the valuation of the interest of the mortgagee is to be accord-

ing to the true value, but not to exceed the just valuation which should be placed upon the mortgaged real estate if unencumbered. If both interests are assessed together without separate valuation, they are assessed to the mortgagor or occupant, the same as unencumbered real estate, and the combined valuation of both interests is not to exceed the just valuation which should be placed upon the real estate, if unencumbered.

The deduction of debts from credits is not allowed in the case of any mortgage required to be assessed as an interest in real estate.

The law does not apply to mortgages held by insurance companies or other persons or associations exempt from taxation nor to mortgages on property assessed by a state board of assessment, nor to mortgages upon property of persons, associations, or corporations taxed by license fee or other special method. The law applies only to mortgages upon property subject to direct assessment and taxation under the general assessment and tax laws of the state.

Wyoming

Constitution, 1889, art. 15, sec. 11. All property, except as in this constitution otherwise provided, shall be uniformly assessed for taxation, and the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

sec. 12. (Certain property is definitely exempt from taxation, and in addition, such other property may be exempt as the legislature may provide by general law.)

Present Law. St. 1899. Mortgages are taxable as personal property in Wyoming (sec. 1763, 1775).

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